

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

NOV 25 2020

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

DEANDRE JAMES #43055-039)
F.C.I. HAZLETON)
P.O. Box 5000)
BRUCESTON MILLS W.V. 26025)
(Full name under which you were convicted,)
prison number, place of confinement, and)
full mailing address))

Petition for Habeas Corpus
Pursuant to 28 U.S.C. § 2241

Petitioner,)
vs.)

Civil Action No. 5:20 cv 248
(to be assigned by Clerk)

PAUL ADAMS)
(Name of Warden or other authorized person)
where you are incarcerated))

Respondent.)

Bailey
Mazzone
Black

Important notes to read before completing this form:

- ★ Please read the entire petition **before** filling it out. Answer **only** those questions which pertain to your claim(s).

1. This petition concerns (check the appropriate box):

- ☒ a conviction
☐ a sentence
☐ jail or prison conditions
☐ prison disciplinary proceedings
☐ a parole problem
☐ other, state briefly: _____

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2. Are you represented by counsel? ☐ Yes ☒ No

If you answered yes, list your counsel's name and address: _____

3. List the name and location of the court which imposed your sentence:

E.D. MICHIGAN

4. List the case number, if known: 09-CR-20177

5. List the nature of the offense for which the sentence was imposed:

18 U.S.C. § 2119 (CARJACKING); 18 U.S.C. § 924(b) (BRANDISHING);
18 U.S.C. § 708 (FLEEING); 18 U.S.C. § 111 (ASSAULT, RESIST); AND
18 U.S.C. § 922(g)(1)

6. List the date each sentence was imposed and the terms of the sentence:

DECEMBER 1, 2009

7. What was your plea to each count? (Check one)

☐ Guilty
☒ Not Guilty
☐ Nolo Contendere

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8. If you were found guilty after a plea of not guilty, how was that finding made?

- ☒ A jury
☐ A Judge without a jury
☐ A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

- ☒ Yes ☐ No

10. If you did appeal, give the following information for each appeal:

- A. Name of Court: SIXTH CIRCUIT
 B. Result: AFFIRMED
 C. Date of Result: UNKNOWN
 D. Grounds raised (List each one): REASONABLENESS OF THE SENTENCE
- _____

Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 10, A through D.

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? This is called a post-conviction pleading.

- ☒ Yes ☐ No

If your answer was yes, complete the following sections:

A. First post-conviction proceeding:

1. Name of Court: E.D. MICHIGAN

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2. Nature of Proceeding: § 2255
3. Grounds Raised: INEFFECTIVE ASSISTANCE
4. Did you receive an evidentiary hearing? ☐ Yes ☒ No
5. Result: DENIED
6. Date of Result: _____

B. Second post-conviction proceeding:

1. Name of Court: L.D. MICHIGAN
2. Nature of Proceeding: SUCCESSIVE § 2255
3. Grounds Raised: § 924(c) INOTEL DAVIS
4. Did you receive an evidentiary hearing? ☐ Yes ☒ No
5. Result: DENIED
6. Date of Result: 2019

C. Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

1. First proceeding: ☒ Yes ☐ No Result: DISMISSED
2. Second proceeding: ☒ Yes ☐ No Result: DENIED

D. If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not: _____

12. For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. **Do not check** any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. **The petition will be returned to you if you merely check one or more of the grounds:**

- A. U.S. Parole Commission unlawfully revoked my parole.
- B. Federal Bureau of Prisons unlawfully computed my sentence.

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- C. Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.
- D. Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.
- E. There is an unlawful detainer lodged against me.
- F. I am a citizen and resident of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.
- G. The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

CAUTION: if you fail to set forth all of the grounds in this petition at this time, you may be barred from presenting additional grounds at a later date.

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach a total of five (5) typed or ten (10) neatly printed pages maximum for all grounds and all attachments.

A. Ground one:

THE SUPREME COURT'S RECENT DECISION INTERPRETING § 922(g)
AND THE SCIENTER ON STATUS ESTABLISHES THE INDICTMENT FAILS
TO CHARGE AN OFFENSE.

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A "rule of thumb" to follow is this: who did exactly what to violate your rights at what time and place).

THE INDICTMENT HERE DOES NOT CONTAIN THE SCIENTER APPLICABLE
TO JAMES'S STATUS. IN ADDITION, IT DOES NOT REFLECT § 924(a)(2).
FROM THESE FACTS IT IS CLEAR THAT THE GRAND JURY NEVER FOUND THE
ELEMENTS ESSENTIAL TO CHARGE AN OFFENSE.

B. Ground two:

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Supporting facts:

C. Ground three:

Supporting facts:

D. Ground four:

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Supporting facts:

13. Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

WERE NOT AVAILABLE

14. If this petition concerns prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions:

- A. Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

☐ Yes ☒ No

1. If your answer to "A" above was yes, what was the result:

N/A

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2. If your answer to "A" above was no, explain:

N/A

B. If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

☐

Yes

☒

No

1. If your answer to "B" above was yes, what was the result:

N/A

2. If your answer to "B" above was no, explain:

N/A

15. Relief: State here, as briefly as possible, exactly what you want the court to do for you:

1. Make **no** legal arguments.

2. Cite **no** cases or statutes.

VACATE THE § 922(g)(1) CONVICTION

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16. If a previous motion to vacate or modify a prisoner's sentence, pursuant to Section 2255, was not filed, or if such a motion was filed and denied, the reasons why Petitioner's remedy by way of Section 2255 is inadequate or ineffective to test the legality of the detention.

THE SUPREME COURT RECENTLY INTERPRETED § 922(g) AND IT
WAS DECIDED AFTER JAMES'S § 2255 AND SINCE THIS DECISION
IS SUBSTANTIVE HE CANNOT MEET THE REQUIREMENTS UNDER § 2244.

Signed this 5TH day of NOVEMBER, 2020.
(day) (month) (year)

Deandre James
Your Signature

Signature of Attorney (if any)

I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct.

Date of Signature: 11-5-20 Deandre James
Your Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DEANDRE JAMES

Your full name

v.

Civil Action No.: 5:20cv248

PAUL ADAMS, WARDEN,

Enter above the full name of respondent in this action

Certificate of Service

I, DEANDRE JAMES (your name here), appearing *pro se*, hereby certify that I have served the foregoing § 2241, Memorandum, AND PAGE MOTION (title of document being sent) upon the respondent by depositing true copies of the same in the United States mail, postage prepaid, upon the following counsel of record for the respondent on NOVEMBER 5, 2020 (insert date here):

(List name and address of counsel for respondent)

PAUL ADAMS, WARREN
P.O. Box 5000
BRUCETON MILLS, WV. 26525

Deandre James
(sign your name)